

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 4, 2004

IN RE:

**GENERIC DOCKET TO ESTABLISH UNE PRICES
FOR LINE SHARING PER FCC 99-355, AND RISER
CABLE AND TERMINATING WIRE AS ORDERED
IN TRA DOCKET 98-00123**

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**DOCKET NO.
00-00544**

ORDER GRANTING JOINT MOTION TO EXTEND STAY

This matter came before Director Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 15, 2003, for consideration of extension of the stay reflected in the Order of the Authority issued on April 1, 2003, pursuant to the *Joint Motion to Extend Authority Stay* ("*Joint Motion*") filed by BellSouth Telecommunications, Inc. ("BellSouth"), United Telephone-Southeast, Inc. ("Sprint/United"), AT&T Communications of the South Central States ("AT&T"), and DIECA d/b/a COVAD Communications Company ("Covad") on November 22, 2002.

Background

On December 9, 1999, the Federal Communications Commission ("FCC") released its "*Line Sharing Order*."¹ In the *Line Sharing Order*, the FCC ordered the unbundling of the high

¹ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 F.C.R. 20912 (1999)

frequency portion of copper loop spectrum so that providers of digital subscriber line (“DSL”) service could obtain access to it as an unbundled network element (“UNE”).

On April 3, 2002, the Authority issued the *First Interim Order* containing decisions rendered by Chairman Sara Kyle and Directors H. Lynn Greer, Jr. and Melvin J. Malone. The *First Interim Order* addressed numerous outstanding issues including Issue No. 20 regarding whether the Authority should require incumbent local exchange carriers (“ILECs”) to install, for the use of competitive local exchange carriers (“CLECs”), dual-purpose line cards in the digital loop carrier system. In the *First Interim Order*, the Directors unanimously voted to order BellSouth and Sprint/United to install, for the CLECs’ use, dual-purpose line cards in the fiber-fed Next Generation DLC equipment in the remote terminal under nondiscriminatory terms and at just and reasonable rates.²

On April 10, 2002, BellSouth filed a petition seeking a stay of the *First Interim Order*. In this petition BellSouth requested that the Authority stay that portion of the *First Interim Order* relating to Issue No. 20.³ At a regularly scheduled Authority Conference held on May 21, 2002 the Directors deliberated the merits of BellSouth’s petition for stay. The Directors subsequently voted to grant BellSouth’s petition in part and stayed for a period of six (6) months the decisions of the Authority memorialized in the *First Interim Order* relating to Issue No. 20. BellSouth and Sprint/United were ordered to comply with the *First Interim Order* in full at the conclusion of the six month period.⁴

On May 24, 2002, the United States Court of Appeals for the D. C. Circuit issued its decision in *United States Telecom Ass’n v. FCC* (the “USTA decision”) vacating the FCC’s *Line*

² *First Interim Order*, p. 43 (April 3, 2002)

³ *BellSouth Telecommunications, Inc.’s Petition for Stay of TRA First Initial Order of April 3, 2002*, p. 1 (June 19, 2002) (redacted version)

⁴ *Order on Petition for Stay and Requests for Reconsideration and Clarification*, p. 7 (June 27, 2002)

Sharing Order and staying its vacatur of the FCC rule until January 3, 2003, pending action by the FCC on remand.⁵ On May 29, 2002 Sprint/United filed a *Joint Motion to Suspend* in this docket asking the TRA to suspend the *First Interim Order* in light of the D.C. Circuit's decision.

On August 26, 2002, BellSouth and Sprint/United, in separate actions, filed petitions for review of the Authority's *First Interim Order* in the United States District Court for the Middle District of Tennessee. BellSouth and Sprint/United did not seek a stay by the federal court of any part of the *First Interim Order* as a result of the stay which the Authority ordered as to Issue 20. BellSouth also filed an appeal in the Court of Appeals for the Middle Section of Tennessee seeking relief from the *First Interim Order*.

On November 22, 2002, BellSouth, Sprint/United, AT&T, and Covad filed the *Joint Motion*. The *Joint Motion* requested that the Authority extend the previously ordered stay of its April 3, 2002 *First Interim Order*. On November 27, 2002, Citizens Telecommunications Company of Tennessee, LLC ("Citizens") filed a letter advising the Authority that Citizens supported the *Joint Motion*. At the December 2, 2002 Authority Conference, the panel assigned to this docket voted unanimously to extend the stay of the Authority's *First Interim Order* as to Issue No. 20 until sixty (60) days after the FCC takes formal action as directed by the Court of Appeals for the D.C. Circuit in the USTA decision. The Directors also voted to hold in abeyance the *Joint Motion to Suspend* filed by Sprint/United on May 29, 2002, in which Sprint/United requested that the Authority suspend its *First Interim Order* and its decision on reconsideration and clarification.

⁵ *US Telecom Ass'n v FCC*, 290 F.3d 415, 430 (D.C. Cir. 2002)

On August 21, 2003, the FCC issued an Order (“*Triennial Review Order*”) in accordance with the U. S. District Court’s remand in the USTA decision.⁶ The FCC’s *Triennial Review Order* was published in the Federal Register on September 2, 2003 and became effective, along with its accompanying rules, on October 2, 2003.

On November 13, 2003, BellSouth, Sprint/United and Citizens (“Petitioners”) filed a *Motion to Vacate Order Regarding Dual Purpose Line Cards* (“*Motion to Vacate*”). The Petitioners asserted that because the FCC took formal action when its *Triennial Review Order* became effective October 2, 2003, the existing stay of the TRA Order would expire on December 2, 2003 without action by the Authority. The *Motion to Vacate* requested the Authority to vacate the *First Interim Order* or, in the alternative, to extend the previously granted stay granted indefinitely.

In anticipation of the expiration of the stay of Issue 20 of the *First Interim Order*, the panel voted unanimously at the November 24, 2003 Authority Conference to extend the stay until December 15, 2003. Additionally, the panel directed the parties to file responses to the *Motion to Vacate* by November 26, 2003. In its response, Covad objected to that part of the Motion seeking a vacatur of the decision on Issue 20, but it does not object to staying the decision indefinitely.⁷

⁶ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), corrected by Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*), *petitions for review pending*, *United States Telecom Ass’n v FCC*, D.C. Cir No 00-1012 (and consolidated cases).


⁷ Covad also claimed that the TRA lacks jurisdiction to grant relief in the form of a vacatur as requested by the Petitioners because of the pending appeals of the Order at both the Tennessee Court of Appeals and in the United States District Court

December 15, 2003 Authority Conference

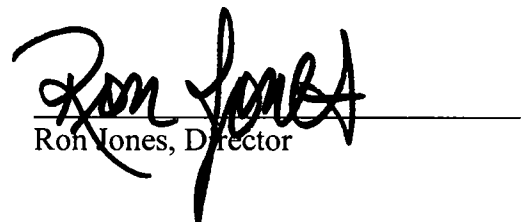
At the December 15, 2003 Authority Conference, based on the pendency of the appeals filed in both the Tennessee Court of Appeals and the United States District Court, the panel voted unanimously to hold the *Motion to Vacate* in abeyance and to extend indefinitely the stay as to Issue 20 of the *First Interim Order*.

IT IS THEREFORE ORDERED THAT:

The *Motion to Vacate* is held in abeyance and the Authority's stay as to Issue No. 20 of the *First Interim Order* is extended indefinitely.


Pat Miller, Director


Sara Kyle, Director


Ron Jones, Director